IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3370 OF 2005

Smt.Surekha Madhukar Kulkarni
and another. ... Applicants.

Versus.

The State of Maharashtra. ... Respondent.

Shri P.B.Patil for the Applicants.

Shri A.S.Gadkari for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 22nd June, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Applicants and the learned A.P.P. for the State.

2. This is an application for regular bail. On a complaint made by one Kangan Vishnu Mer an order was passed under section 156(3) of the Code of Criminal Procedure, 1973. On the basis of the said order, crime was registered against the Applicants and the husband of the Applicant No.1 Madhukar Prabhar Kulkarni for offences punishable under section 420, 423, 465, 467, 468, 471, read with section 34 of the Indian Penal Code. The case of the prosecution is that the Applicant No.1, her husband Madhukar, the complainant Kangan, Complainant's wife and one Dattatraya Bhoir formed a partnership firm by name "Swami Samarth Estate Agent and Land Developers" and accordingly a deed of partnership

was executed on 21st October 2004. The Complainant noticed a public notice appearing in a newspaper on 9th March 2005 which showed that the said Madhukar Kulkarni was trying to sell a plot of land on behalf of the firm. The case is that it was revealed that the said Madhukar Kulkarni had accepted money from various persons for sale of land on behalf of the firm. Therefore, the partnership was dissolved at the instance of the Complainant. The allegation made in the complaint filed by the Complainant is that certain amounts were withdrawn by the accused from the Bank account of the firm. Further allegation is that the Accused No.1 Madhukar has collected large amounts from the members of the public.

3. The learned Sessions Judge rejected the Application for bail on the ground that Madhukar, the husband of the Applicant No.1 was absconding and if the Applicants are enlarged on bail they will not face trial and will join hands with Madhukar. The learned Judge observed that the investigation was still incomplete.

4. The learned Counsel for the Applicants submitted that the Applicants are in custody from 24th April 2005. He submitted that the Applicant No.1 is a woman and her son the Applicant No.2 is only 21 years old. He submitted that in substance the allegations made by the original Complainant are against Madhukar and it is the

said Madhukar who has played main roll in the alleged offence. He submitted that considering the allegations made by the Complainant no custodial interrogation of the Applicants is required. He submitted that even if the allegations against the Accused Madhukar are accepted, keeping the Applicants in custody will not help the Police in getting hold of the said absconding Accused.

5. The learned A.P.P. Shri Gadkari fairly submitted on instructions of the Investigating officer that the investigation is substantially complete. He submitted that the Applicant No.2 has signed certain receipts showing that he has accepted money from the members of the public and there are certain withdrawals made by him. He, therefore, submitted that the custodial detention is necessary. He stated that as the Accused Madhukar is missing, the Applicants cannot be enlarged on bail, as the Applicant No.1 is his wife and the Applicant No.2 is his son.

6. I have considered the rival submissions. In the complaint filed by the Complainant, the allegations are made against the Applicants and Madhukar which indicate that essentially there is a dispute between the partners in a partnership business. The Applicants are in custody from 24th April 2005. The Applicants are now in magisterial custody. The Applicant No.2 does not appear

to be a partner in the firm M/s.Swami Samarth Estate Agent and Land Developers. As the investigation has been substantially completed and as the Applicants, especially the Applicant No.2 is already interrogated by the Policy in custody, their detention in custody cannot be continued taking into account the allegations made by the Complainant. Assuming that Madhukar is absconding, keeping the Applicants in custody is not going to help the prosecution. It cannot be ignored that the age of the Applicant No.2 is only 21 years and the Applicant No.1 is a woman. To ensure that the Applicants do not abscond, stringent conditions can be imposed.

6. Hence the following order is passed:

(i) The Applicant No.1 shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.20,000/- with one or two local sureties in the like amount. The Applicant No.2 shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.40,000/- with one or two local sureties in the like amount.

(ii) Bail is granted subject to further condition that the Applicant No.1 shall attend the concerned Police Station on every Monday from 5.00 p.m. to 7.00 p.m.

till filing of the Charge sheet. The Applicant No.2 shall attend the concerned Police Station on every Monday, Wednesday and Friday from 5.00 p.m. to 7.00 p.m. till the charge sheet is filed. After the charge sheet is filed the Applicants will attend the concerned Police Station as and when called upon them to do so.

(iii) The Applicants will not make any attempt either directly or indirectly to influence or pressurise the prosecution witnesses and to tamper with the prosecution evidence. The Applicants will also cooperate for early disposal of the trial.

(iv) Any attempt on the part of the Applicants to delay the trial will be a ground for cancellation of the bail.

(v) The Application is disposed of in the above terms.

(vi) The parties to act on an authenticated copy of this order.

Judge.